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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Miguel Angel Rodelo-Cota,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.  
14

No. CV-22-00110-TUC-RM

**ORDER**

15 Pending before the Court is Movant Miguel Angel Rodelo-Cota's Motion Under  
16 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence ("Section 2255 Motion").  
17 (Doc. 1 in CV-22-110-TUC-RM; Doc. 147 in CR-19-844-TUC-RM (LAB)).<sup>1</sup>  
18 Respondent United States of America filed a Response on May 19, 2022. (Doc. 5.)  
19 Movant did not file a Reply, and the deadline for doing so has expired. For the following  
20 reasons, the Section 2255 Motion will be denied.

21 **I. Background**

22 In District of Arizona case number CR-19-844-TUC-RM (LAB), Movant pled  
23 guilty pursuant to a plea agreement to Conspiracy to Possess with Intent to Distribute  
24 Fentanyl and Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(vi),  
25 841(b)(1)(B)(viii), and 846, as charged in Count One of the Information; Conspiracy to  
26 Launder Monetary Instruments in violation of 18 U.S.C. § 1956(a)(2)(B)(i) and 1956(h),  
27 as charged in Count Two of the Information; and Possession of a Firearm in Furtherance

28 <sup>1</sup> Unless otherwise noted, all docket citations refer to the docket in case number CV-22-110-TUC-RM.

1 of a Drug Trafficking Offense in violation of 18 U.S.C. § 924(c)(1)(A)(i), as charged in  
 2 Count Three of the Information. (Docs. 53, 57, 135 in CR-19-844-TUC-RM (LAB).) As  
 3 the factual basis for the plea, Movant admitted the following:

4 From a time unknown until February 27, 2019, at or near Phoenix and elsewhere  
 5 in the District of Arizona, Miguel Angel Rodelo-Cota conspired with others  
 6 known and unknown to acquire and sell fentanyl and methamphetamine and  
 7 launder the illegal proceeds. On January 4, 9, 29, and February 27, 2019, Rodelo-  
 8 Cota conspired with David Rivera-Zavala who and [sic] sold 4.2 kilograms in  
 9 fentanyl pills and 2.32 kilograms of methamphetamine, in total, to an undercover  
 10 agent. Rodelo-Cota was present and participated in some of the undercover buys  
 11 and was involved with Rivera-Zavala in acquiring the drugs to sell to the  
 12 undercover agent. On February 27, 2019, Rivera-Zavala instructed Ines Coronel-  
 Beltran to accompany him and Miguel Angel Rodelo-Cota to a drug transaction  
 with the undercover agent in order to protect the fentanyl pills against a possible  
 theft. Coronel-Beltran arrived at the meeting with Rodelo-Cota and was nearby in  
 his vehicle with a loaded firearm under him as he sat in the driver's seat. Prior to  
 his arrest on February 27, 2019, Miguel Angel Rodelo-Cota also conspired with  
 others to export what he knew to be illegal proceeds of the drug trafficking  
 conspiracy to Mexico in an effort to conceal the nature, source, location,  
 ownership and control of the drug trafficking proceeds.

13 (Doc. 57 at 10 in CR-19-844-TUC-RM (LAB).) After a change-of-plea hearing held on  
 14 March 11, 2020, Magistrate Judge Leslie A. Bowman found that there was a factual basis  
 15 for Movant's plea and that the plea was knowing and voluntary. (Docs. 56, 58 in CR-19-  
 16 844-TUC-RM (LAB).) This Court adopted that finding and accepted Movant's guilty  
 17 plea. (Doc. 68 in CR-19-844-TUC-RM (LAB).)

18 On August 19, 2021, this Court sentenced Movant to concurrent terms of 80  
 19 months imprisonment on Counts One and Two and a consecutive term of 60 months  
 20 imprisonment on Count Three, with credit for time served, followed by concurrent 5-year  
 21 terms of supervised release. (Docs. 133, 135 in CR-19-844-TUC-RM (LAB).) At his  
 22 sentencing hearing, Movant averred that he was satisfied with the services of his attorney  
 23 and that his attorney had answered all of his questions regarding his case.

## 24 **II. Section 2255 Motion and Response**

25 Movant raises two claims for relief pursuant to 28 U.S.C. § 2255: (1) trial counsel  
 26 rendered ineffective assistance by advising Movant to plead guilty to the firearm count  
 27 when Movant denied knowing of the firearm; and (2) trial counsel rendered ineffective  
 28 assistance by advising Movant to plead guilty to the money laundering count when no

1 evidence supported that count. (Doc. 1 at 6-7.)<sup>2</sup>

2 In its Response, the United States of America argues that Movant's trial counsel  
3 did not render ineffective assistance by advising Movant to enter the plea agreement at  
4 issue because (1) counsel negotiated the plea agreement to dramatically reduce Movant's  
5 sentencing exposure; (2) the factual bases for the firearm and money laundering charges  
6 were included in the plea agreement; (3) Movant averred that he was pleading guilty  
7 knowingly and voluntarily and that he was satisfied with his attorney's advice; (4) the  
8 magistrate judge and this Court found Movant's plea to be knowing and voluntary; (5) a  
9 defendant can be convicted of a violation of 18 U.S.C. § 924(c)(1) if a co-conspirator  
10 used or carried a firearm in furtherance of the conspiracy; and (6) there was evidence to  
11 support a finding that Movant knew of the firearm at issue. (Doc. 5.)

### 12 **III. Discussion**

13 A convicted defendant asserting a claim of ineffective assistance of counsel must  
14 show both deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668,  
15 687 (1984). To establish deficient performance, the defendant "must show that counsel's  
16 representation fell below an objective standard of reasonableness." *Id.* at 688. To  
17 establish prejudice, "[t]he defendant must show that there is a reasonable probability that,  
18 but for counsel's unprofessional errors, the result of the proceeding would have been  
19 different." *Id.* at 694.

20 When a criminal defendant pleads guilty, he cannot "thereafter raise independent  
21 claims relating to the deprivation of constitutional rights that occurred prior to the entry  
22 of the guilty plea," but instead "may only attack the voluntary and intelligent character of  
23 the guilty plea by showing that the advice he received from counsel" was not "within the  
24 range of competence demanded of attorneys in criminal cases." *Tollett v. Henderson*,

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26 <sup>2</sup> Movant also alleged in his Section 2255 Motion that trial counsel rendered ineffective  
27 assistance under the Sixth Amendment by advising Movant to sign a plea agreement that  
28 waived Movant's rights to assert the ineffective assistance of counsel. (Doc. 1 at 5.) This Court summarily dismissed that claim because Movant's plea agreement provides that the waiver of Movant's right to file an appeal or collateral attack does not bar an otherwise-preserved claim of ineffective assistance of counsel. (Doc. 4 at 2, 4; *see* Doc. 57 at 7 in CR-19-844-TUC-RM (LAB).)

1 411 U.S. 258, 266-67 (1973) (internal quotation marks omitted). To establish prejudice  
 2 on a claim of ineffective assistance of counsel challenging the voluntary and intelligent  
 3 character of a guilty plea, a “defendant must show that there is a reasonable probability  
 4 that, but for counsel’s errors, he would not have pleaded guilty and would have insisted  
 5 on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

6 **A. Ground Two of Section 2255 Motion: Ineffective Assistance of Counsel**  
 7 **Based on Advice to Plead Guilty to Firearm Offense**

8 In Ground Two of his Section 2255 Motion, Movant alleges that trial counsel  
 9 rendered ineffective assistance of counsel by advising Movant to plead guilty to the  
 10 charge of Possession of a Firearm in Furtherance of a Drug Trafficking Offense. (Doc. 1  
 11 at 6.) Movant indicates that trial counsel advised him his possession of the firearm was  
 12 constructive, and Movant argues that such advice was constitutionally deficient because  
 13 Movant repeatedly denied knowing his co-defendant had a firearm and counsel “should  
 14 have argued the firearm was not foreseeable” to Movant. (*Id.*)

15 Pursuant to *Pinkerton v. United States*, a defendant can be convicted of a  
 16 substantive offense if he was a party to an unlawful conspiracy and the substantive  
 17 offense was committed in furtherance of the conspiracy. 328 U.S. 640, 645-47 (1946).  
 18 Here, Movant does not challenge his guilty plea with respect to Count One of the  
 19 Information, and therefore there is no dispute that Movant was a party to an unlawful  
 20 conspiracy to possess with intent to distribute fentanyl and methamphetamine. (*See* Doc.  
 21 1.) The Ninth Circuit has held that a defendant may be convicted, based on *Pinkerton*  
 22 liability, of possessing a firearm during a drug trafficking offense in violation of 18  
 23 U.S.C. § 924(c), even absent direct evidence that the defendant possessed or knew of the  
 24 firearm used in the offense. *See United States v. Johnson*, 886 F.2d 1120, 1123 (9th Cir.  
 25 1989). In so holding, the Ninth Circuit recognized that the drug industry “is a dangerous,  
 26 violent business” and that “it is reasonable to assume that a weapon of some kind” will be  
 27 used in a drug trafficking operation. *Id.*

28 Based on the holdings of *Pinkerton* and *Johnson*, Movant’s trial counsel did not

1 render deficient performance by advising Movant to plead guilty to the firearm charge  
2 even though Movant denied knowing that his co-defendant had a firearm.

3 **B. Ground Three of Section 2255 Motion: Ineffective Assistance of**  
4 **Counsel Based on Advice to Plead Guilty to Money Laundering Offense**

5 In Ground Three of his Section 2255 Motion, Movant alleges that his trial counsel  
6 rendered ineffective assistance of counsel by advising Movant to plead guilty to the  
7 charge of Conspiracy to Launder Monetary Instruments when the plea agreement,  
8 presentence report, change of plea hearing, and sentencing hearing were devoid of any  
9 factual support for that charge. (Doc. 1 at 7.)

10 In relevant part, 18 U.S.C. § 1956(a)(2)(B)(i) prohibits transporting, transmitting,  
11 transferring, or attempting to transport, transmit, or transfer a monetary instrument or  
12 funds from a place in the United States to a place outside the United States “knowing that  
13 the monetary instrument or funds involved in the transportation, transmission, or transfer  
14 represent the proceeds of some form of unlawful activity and knowing that such  
15 transportation, transmission, or transfer is designed in whole or in part . . . to conceal or  
16 disguise the nature, the location, the source, the ownership, or the control of the proceeds  
17 of specified unlawful activity.” A person who conspires to commit a violation of §  
18 1956(a)(2)(B)(i) shall be subject to the same penalties as those prescribed for the  
19 substantive offense. 18 U.S.C. § 1956(h).

20 As discussed above, Movant does not challenge his guilty plea with respect to  
21 Count One of the Information, and therefore there is no dispute that Movant was engaged  
22 in a drug trafficking conspiracy. (*See* Doc. 1.) Respondent United States of America  
23 avers that the conspiracy involved not only drug transactions but also the transfer to  
24 Mexico of the proceeds of those drug transactions. (Doc. 5 at 7.) As discussed above,  
25 the factual basis of Movant’s plea agreement states that from a time unknown until  
26 February 27, 2019, Movant conspired with others to launder the illegal proceeds of  
27 fentanyl and methamphetamine sales and to export them to Mexico in an effort to conceal  
28 the nature, source, location, ownership and control of the drug trafficking proceeds.


(Doc. 57 at 10 in CR-19-844-TUC-RM (LAB).) Movant agreed to that factual basis when he entered his plea agreement. (*Id.*) “Solemn declarations in open court carry a strong presumption of verity.” *United States v. Moore*, 599 F.2d 310, 314 (9th Cir. 1979) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)).

Because Movant’s plea agreement sets forth the factual basis for the money laundering count, trial counsel did not render ineffective assistance by advising Movant to plead guilty to a charge that lacked a factual basis. Furthermore, the Court notes that Movant’s plea agreement significantly reduced his sentencing exposure; that the money laundering conviction did not increase Movant’s total term of imprisonment, since the Court ordered the sentence for that conviction to be served concurrently with the sentence for Movant’s unchallenged drug trafficking conviction; and that Movant expressed satisfaction with his attorney during his sentencing hearing.

**IT IS ORDERED** that Movant’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. 1 in CV-22-110-TUC-RM and Doc. 147 in CR-19-844-TUC-RM (LAB)) is **denied**, and the civil action opened in connection with the Motion (CV-22-110-TUC-RM) is **dismissed with prejudice**. The Clerk of Court must enter judgment accordingly.

**IT IS FURTHER ORDERED** that, pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, in the event Movant files an appeal, the Court declines to issue a certificate of appealability because Movant has not made a substantial showing of the denial of a constitutional right and reasonable jurists would not find the Court’s ruling debatable. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated this 12th day of August, 2022.

  
 Honorable Rosemary Márquez  
 United States District Judge